

allow the Ombudsman to have direct access to the Secretary, the Governor's office, and other agencies within state government.

### 3. Compliance Advisory Panel

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses. Four members will be selected by the state legislature who are owners, or represent owners, of small businesses; the majority and minority leadership in both the house and the senate shall each appoint one member. One member will be selected by the head of the agency in charge of the Air Pollution Permit Program. Kentucky chose to establish a nine member CAP with a membership consistent with the aforementioned CAA requirements with the following modification: the Secretary of the Natural Resources and Environmental Protection Cabinet shall select two members instead of one and the Secretary of the Economic Development Cabinet shall select one panel member to represent that agency. The SBAP will serve as the secretariat to the CAP in the development and dissemination of reports, advisory opinions, and other information.

The duties of the CAP include: providing for ensuring the overall effectiveness of the PROGRAM; rendering advisory opinions regarding the effectiveness of the state PROGRAM, the difficulties encountered, and the degree and severity of enforcement; reviewing information for small business stationary air pollution sources to assure such information is understandable by the layperson; and to make periodic reports to the Administrator of the Environmental Protection Agency in accordance with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act.

### 4. Source Eligibility

Kentucky has incorporated section 507(c)(1) and defined a Small Business Stationary Source as a source that:

- (1) Is owned or operated by a person who employs 100 or fewer individuals;
- (2) is a small business concern as defined in the Small Business Act;
- (3) is not a major stationary source as defined in Titles I and III of the CAA;
- (4) emits less than 50 tons per year (tpy) of any regulated pollutant; and
- (5) emits less than 75 tpy of all regulated pollutants.

Kentucky has established the following mechanisms as required by section 507: (1) A process for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c) (1) of the CAA; (2) A process for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA, but do not emit more than 100 tpy of all regulated pollutants; and (3) A process for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the Department determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

### Final Action

In this action, EPA is approving the PROGRAM SIP revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 18, 1995 unless, within 30 days of its publication, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 18, 1995.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 18, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

By today's action, the U.S. EPA is approving a State program created for the purpose of assisting small business stationary sources in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small business stationary sources; it is a program under which small business stationary sources may elect to take advantage of assistance provided by the State. Therefore, because the U.S. EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. Environmental Protection Agency*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. Sections 7410(a)(2) and 7410(k).

### List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.